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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,569	03/17/2004	Scott Seamans	040130-050011US	5965
20350	7590	01/06/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,569	<b>Applicant(s)</b> SEAMANS, SCOTT	
	<b>Examiner</b> Jila M. Mohandesi	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 14, 17-19 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 17-19 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11-25-05 12-02-05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 02, 2005 has been entered.

### ***Response to Amendment***

2. The proposed reply filed on December 02, 2005 indicates that claims 1-14 are cancelled. It appears that this is a typographical error and applicant meant to indicate the non-elected claims 1-13 are cancelled.

### ***Information Disclosure Statement***

3. The submission of some of the Non Patent Literature Documents disclosed on the information disclosure statement filed December 02, 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because Non Patent Literature Documents BCC, BDD, CA, CB, CC, CD and CF are not prior art documents. It has been placed in the application file, but the information referred to therein with respect to the Non Patent Literature Documents BCC, BDD, CA, CB, CC, CD and CF has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes

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of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

4. When submitting a new IDS, only cite new references on the IDS to be considered. Do not repeat and list the previously cited and considered references for ease of consideration.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 14, 17-19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsin et al. (6,640,464) in view of Girard (6,860,035) and Seidel et al. (4,476,600) and the admitted prior art in the disclosure of the instant specification

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(page 13, lines 8-25). Hsin '464 discloses a piece of footwear comprising: a sole; an upper portion extending from the sole, wherein the upper portion is adapted to cover the top of a user's foot, and wherein the upper portion includes a rear opening for receiving the user's foot; a pair of connectors (see figure 7 embodiment) rotatably coupled to the upper portion on opposite sides of the opening, wherein each of the connectors includes an aperture; a strap operably coupled to the upper portion, wherein the strap is configured to be positioned across the rear opening to engage the back of a user's foot, and wherein the strap has a pair of ends. Hsin '464 does not disclose the upper and sole section being formed from a piece of lofted foam material and for the strap to be attached to the connectors with the ends of a strip of material passing through the aperture. Girard '035 discloses a piece of footwear comprising: a sole; an upper portion extending from the sole, wherein the upper portion is adapted to cover the top of a user's foot, and wherein the upper portion includes a rear opening for receiving the user's foot; at least one connector (guide 27) coupled to the upper portion; a strap operably coupled to the upper portion, wherein the strap (26) is configured to be positioned across the rear opening to engage the back of the user's foot; at least one adjustment mechanism (strip 26b with hook and loop fastener) that is interactable with the connector and the strap to adjust the position of the strap relative to the back of the user's foot. See Figure 1 embodiment.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the upper and sole of Aguerre '249 from a piece

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of expanded foam material and the strap from expanded foam material as taught by Seidel '600 for easier and cheaper manufacturing of the footwear.

With respect to the expandable foam material of Seidel '600 being lofted foam material, the admitted prior art in the instant specification discloses that it is desirable to manufacture footwear from an expandable EVA known commercially as LEVIREX which is considered to be a lofted foam material which can exhibit a final growth value of between 1.47 and 1.58. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the modified footwear of Seidel '600 from lofted foam material as taught by the admitted prior art in the instant specification to provide a relatively soft footwear piece that has very good anti-slip capabilities, and at the same time, size reproducibility and durability.

Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a strip to the strap and connector of Hsin '464 as taught by Girard '035 to be able to adjust the position of the strap relative to the back of the user's foot.

With respect to claim 18, whether the coupling arrangement is hook and loop or snaps or any other art recognized equivalent is an obvious matter of choice, such as to require less manual dexterity to operate.

### ***Response to Arguments***

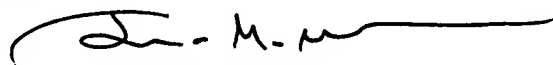
9. Applicant's arguments with respect to claims 14, 17-19 and 23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
January 05, 2006